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10/692,835	10/23/2003	Martine Fennelly	FLEECE.001A	9218

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/692,835	Applicant(s) FENNELLY, MARTINE	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 19-32, 43, 53-57 and 60-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 19-32, 43, 53-57 and 60-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claim 43** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The contour element is unclear because, from the drawings and specification, it appears that the contour element is the actual shape of the pad cut accordingly as show in figs. 3e,3f and not a separate element or cooperate with the pad elements as claimed. Specification, page 26, does not even describe the contour element being something else other than the pad element itself. Note, page 26, line 13, Applicant calls the contour element as "contour pad element".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-2,4,6-7,9-11,19-20,22-25,27-29,31-32,43,53-57,60-63,66-69** are rejected under 35 U.S.C. 102(b) as being anticipated by Vasko et al.(US 4683709).

For claim 1, Vasko et al. teach a saddle pad apparatus 12 adapted to support a saddle while maintaining substantially unimpeded movement of the spinal column of a living subject, comprising a first plurality of pads 36 (col. 5, lines 5-8) disposed laterally to one side of the spine and a second plurality of pads 38 (col. 5, lines 5-8) disposed laterally to the other side of the spine so that said first and second plurality of pads straddle said spinal column and are sufficiently distant therefrom so as not to impede movement of the spinal column of said living subject, each of the pads being adapted to individually cooperate with a specific feature of the anatomy of the living subject.

For claim 2, Vasko et al. teach wherein said specific features comprise gaps or recesses in the subject's anatomy.

For claim 4, Vasko et al. teach wherein at least one of said pads varies in thickness (see fig. 8).

For claim 6, Vasko et al. teach wherein said plurality of pads are disposed in pockets 28,30 formed substantially between a first layer 14 and a second layer 17 of material.

For claim 7, Vasko et al. teach wherein said plurality of pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claim 9, Vasko et al. teach wherein said living subject comprises an equine.

For claim 10, Vasko et al. teach wherein said apparatus is further adapted to mitigate rocking of said saddle back and forth on said living subject during riding.

For claim 11, Vasko et al. teach wherein said apparatus is further adapted to mitigate rocking of said saddle back and forth on said living subject during riding based at least in part on said variation in thickness.

For claim 19, Vasko et al. teach saddle pad apparatus 12 adapted to support a saddle on a living subject comprising a plurality of pads 36,38 that distribute load from said saddle substantially evenly on said living subject over only a plurality of non-contiguous regions of said living subject's anatomy such that during riding said saddle is substantially stable around a rotational axis transverse to the longitudinal axis of the spinal column of said subject.

For claim 20, Vasko et al. teach wherein said apparatus comprises a plurality of pads 36,38 disposed laterally to said spine.

For claim 22, Vasko et al. teach wherein at least one of said pads varies in thickness (fig. 8).

For claim 23, Vasko et al. teach wherein at least a portion of said plurality of pads are formed from a visco-elastic foam material (col. 2, lines 65-68 and col. 3, lines 32-48).

For claim 24, Vasko et al. teach wherein said plurality of pads are disposed in pockets 28,30 formed substantially between a first layer 14 and a second layer 17 of material.

For claim 25, Vasko et al. teach wherein said plurality of pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claim 27, Vasko et al. teach wherein said living subject comprises an equine.

For claim 28, Vasko et al. teach wherein said apparatus is further adapted to support said saddle while maintaining substantially unimpeded movement of the spinal column of said living subject.

For claim 29, Vasko et al. teach a saddle pad adapted for use with a saddle on an equine, comprising: first and second substantially flexible elements 14,17 having roughly the same shape, said first and second elements being bond together in at least a plurality of locations along their periphery said first element being in direct contact with the skin of said equine; and a plurality of compressible foam pad elements 36,38 disposed between said first and second flexibly elements, said pad elements straddling the spine of said equine and being disposed within said saddle pad and sufficiently distant from said spine such that the movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding, wherein substantial weight redistribution of said saddle in a front-back direction is frustrated by said pad elements; and wherein said unimpeded spine movement, said frustration of redistribution, and said first flexible element cooperate to provide reduced discomfort for said equine during said riding.

For claim 31, Vasko et al. teach at least one peripheral ridge 19,26,22 disposed substantially along a front or back periphery of said first and second elements, said peripheral ridge cooperating with an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding.

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For claim 32, Vasko et al. teach a saddle pad adapted for use, with a saddle, on an equine, comprising: first and second substantially flexible elements 14,17 having roughly the same shape, said first and second elements being bound together in at least a plurality of locations along their periphery, said first element being in direct contact with the skin of said equine; a plurality of compressible foam pad elements 36,38 disposed between said first and second flexibly elements, a first portion of the pad elements having a first shape and a second portion of the pad elements having a second shape, said pad elements straddling the spine of said equine and being disposed within said saddle pad and sufficiently distant from said spine such that the movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding, first and second restraining straps 40,41 affixed to at least said second flexible element, said straps each being adapted for substantially concealed tethering to said saddle; and at least one peripheral ridge 19,26,22 disposed substantially along a front or back periphery of said first and second elements, said peripheral ridge cooperating with an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding; wherein said pad elements having said first shape are adapted to interface with gaps formed in the withers region of said animal, whereas said pad elements having said second shape are adapted to interface with gaps formed in the region of the animal directly under a rear portion of said saddle.

For claim 43, Vasko et al. teach tilt-inhibiting saddle pad apparatus, comprising: a body element 14,17 having a plurality of pockets 28,30 formed therein; a plurality of pad

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elements 36,38 disposed within respective ones of said pockets; and a contour element (with regard to the 112 rejection above, the Examiner is interpreting the shape of the pad as the contour element which is shown in the drawings of Vasko) disposed within a respective one of said pockets, said contour element having physical properties adapted to cooperate with said pad elements and the anatomy of an animal on which said pad apparatus and a saddle are disposed to maintain said saddle in a substantially constant orientation with respect to said animal.

For claim 53, Vasko et al. teach a pad element 36,38 adapted for use in a saddle pad, wherein said pad element is formed from a substantially resilient material (col. 2, lines 65-68 and col. 3, lines 32-48) and is adapted for selective removal from said saddle pad by a user; and wherein said pad element is particularly shaped to substantially accommodate a particular withers region artifact on the anatomy of an animal on which said pad element and saddle pad is utilized.

For claim 54, Vasko et al. teach wherein said resilient material comprises a visco-elastic foam (col. 2, lines 65-68 and col. 3, lines 32-48).

For claim 55, Vasko et al. teach wherein said pad element has a plurality of densities associated therewith in its uncompressed state.

For claim 56, Vasko et al. teach wherein said plurality of densities are substantially stratified (fig. 8) with respect to the width dimension of said element.

For claim 57, Vasko et al. teach wherein said pad element further comprises a plurality of substantially rounded edges (self explanatory from figures).

For claim 60, Vasko et al. teach an apparatus adapted for use on high-withered animals, comprising: a substantially flexible pad 14,17 having a plurality of features 28,30 adapted to capture respective ones of pad elements; a plurality of pad elements 36,38 captured by respective ones of said features; wherein said pad elements and said pad cooperatively form a raised feature element (fig. 1 where ref. 12 is pointing at) are specifically adapted to raise a frontal portion of a saddle disposed over top of said pad element with respect to a withers region in order to mitigate tilting or rocking of the saddle.

For claim 61, Vasko et al. teach wherein said pad elements are formed from visco-elastic foam (col. 2, lines 65-68 and col. 3, lines 32-48).

For claim 62, Vasko et al. teach a pad interface 12 adapted to interface between said pad and said animal, said pad interface adapted to (i) dissipate localized pressure; (ii) dissipate heat; and (iii) dissipate moisture.

For claim 63, Vasko et al. teach a coordinated riding system for use on an animal, comprising: a pad retaining structure 12; a plurality of pad elements 36,38 that straddle the spinal column and are sufficiently distant from a spinal column of said animal so as to not impede movement thereof during animal ambulation, said plurality of pad elements being retained by said structure and adapted to provide a substantially uniform distribution of pressure and withers support; and an interface element 17 disposed between said animal and said pad elements, said interface element being adapted to provide substantial pressure dissipation, moisture dissipation, and thermal dissipation.

For claim 66, Vasko et al. teach a saddle pad apparatus adapted to support a saddle on a living subject, comprising: a plurality of first pads 36 (see col. 5, lines 5-10) disposed in a forward region of said apparatus, at least one of said plurality of first pads being disposed substantially laterally on each of the two sides of a spinal column of said living subject (inherent in Vasko et al. because if a plurality of pads on each pockets are being used, one has to be in front of the other and each pocket is on each side of the horse); a plurality of second pads 38 (see col. 5, lines 5-10) disposed in a rear region of said apparatus, at least one of said plurality of second pads being disposed substantially laterally on each of the two sides of a spinal column of said living subject (inherent in Vasko et al. because if a plurality of pads on each pockets are being used, one has to be in front of the other and each pocket is on each side of the horse); wherein said first and second pads cooperate to distribute load from said saddle on said living subject over a plurality of non-contiguous regions of said living subject's anatomy such that during riding such that said saddle is substantially stable around a rotational axis transverse to the longitudinal axis of the spinal column of said subject.

For claim 67, Vasko et al. teach wherein said living subject comprises an equine, and said first and second pads have first and second shapes respectively (see figs.), said first shape being adapted to fit substantially within the withers region of said equine and support at least a portion of the front of said saddle.

For claim 68, Vasko et al. teach wherein said second shape is substantially wedge-shaped (see figs.), and adapted to support at least a portion of the rear of said saddle.

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For claim 69, Vasko et al. teach a saddle pad apparatus 12 adapted to support a saddle on a high-withered equine, comprising: a plurality of first pads 36 (see col. 5, lines 5-10) disposed in a forward region of said apparatus, at least one of said plurality of first pads being disposed substantially laterally on each of the two sides of a spinal column of said equine yet not interfering therewith (inherent in Vasko et al. because if a plurality of pads on each pockets are being used, one has to be in front of the other and each pocket is on each side of the horse); a plurality of second pads 38 (col. 5, lines 5-10) disposed in a rear region of said apparatus, at least one of said plurality of second pads being disposed substantially laterally on each of the two sides of a spinal column of said equine yet not interfering therewith (inherent in Vasko et al. because if a plurality of pads on each pockets are being used, one has to be in front of the other and each pocket is on each side of the horse); wherein said first and second pads cooperate to distribute load from said saddle on said equine over a plurality of non-contiguous regions of said equine's anatomy such that during riding such that said saddle is substantially stable against unwanted tilting in the forward-back direction; and said first pads are adapted to fit substantially within the withers region of said equine and support at least a portion of the front of said saddle.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 3,5,21,64** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasko et al. (as above).

Vasko et al. teach at least a portion of the gaps are disposed in the withers region of the subject (gaps exist in the wither area of the horse when a pad of such taught by Vasko is placed thereon) and plurality of pads are formed from a visco-elastic foam material (col. 2, lines 65-68 and col. 3, lines 32-48). However, Vasko et al. are silent about wherein said plurality comprises four discrete pads, two per side of the spine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ four pads in the saddle pad of Vasko et al., depending on the area of the horse one wishes to cushion. Note, the pads are adapted to cooperate with a recess or gap within the anatomy of the subject.

7. **Claims 8,26,30,65** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasko et al. (as above) in view of Woods (US 5802823).

Vasko et al. teach a fiber-based material 14 being disposed to contact said saddle. However, Vasko et al. are silent about material 17 being sheepskin disposed to contact the skin of said living subject. Woods teaches a saddle pad having a material 62 being sheepskin disposed to contact the skin of said living subject. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

Response to Arguments

8. Applicant's arguments filed 3/13/06 have been fully considered but they are not persuasive.

Applicant argued that Vasko et al. do not teach the pads being sufficiently distant from the spine.

What is considered "sufficiently distant"? One inch, two inches, etc.? When the user places the Vasko pad apparatus on a horse, the pads will be sufficiently distant from the spine because the pads are on the sides of the horse (see fig. 1 of Vasko).

Applicant argued that Vasko et al. do not teach maintaining substantially unimpeded movement of the spinal column.

When a user places the pad apparatus of Vasko on the horse, the pads 36,38 are on the side of the horse, thus, does not interfere with the spinal column. Again, Applicant fails to disclose the distance that the pads should be away from the spinal column, thus, Vasko distance (where ref. 27 is pointing at in fig. 2) is sufficient enough to not interfere with the spinal column. In addition, it is unlikely that the pads will interfere with the spinal column anyhow because when a user places the pad of Vasko on a horse, chances are, the pads occupy the side of the horse and there exists a gullet region between the pads and the horse. As stated by Applicant, Vasko teaches immediate proximity, which can be interpreted as "sufficient distant" since no distant has been claim so adjacent and proximity can be interpreted as sufficient distant.

Applicant argued that Vasko et al. teach only contiguous padding.
Although Vasko et al. do teach multiple pockets and multiple inserts (see Col. 5,

lines 3 - 8). Vasko does not teach, inter alia, distributing these pockets and inserts in a non-contiguous manner, and using only these non-contiguous pads to distribute load. As noted above, Vasko simply does not contemplate using the same regions of the animal's anatomy as Applicant's invention for load distribution.

Col. 5, lines 5-8, of Vasko et al. teach multiple pockets for multiple inserts, which indicates that each insert is placed in each pocket; therefore, the pockets and pads are non-contiguous due to each pad in each pocket. Each pad in each pocket covers a region of the living object to distribute load.

Applicant argued that Vasko et al. do not teach contour element.

As stated in the 112 rejection above, Applicant failed to describe what this "contour element" actually is because it appears that the contour element is the actual pad element with contour shape. Therefore, the pad of Vasko is contoured to fit in the pocket as shown in their drawings.

Applicant argued that Vasko et al. teach a saddle that will tilt and pitch with the animal's movement, therefore, Vasko et al.'s apparatus is not tilt-inhibiting saddle pad.

Without evidence, Applicant's allegation that Vasko's saddle tilting and pitching is not given much weight. Tilting and pitching depend on how the user ties the saddle down with regards to the straps and not the pad itself. The pad will tilt regardless unless the user strap the pad down tight. Even tightly strapped, the pad will move some degree but not a lot. In addition, inhibit does not mean that it is completely preventable

because the word inhibit merely means to reduce, decrease or limit tilting and pitching and in no way suggest complete prevention of tilting and pitching. Therefore, even if Vasko's pad tilt, the pad still reads on Applicant's claim language, unless Applicant define the degree of tilt.

Applicant respectfully requests that the Examiner point to specific support for the Examiner's contention that Vasko teaches accommodation of a particular withers region artifact (Applicant can find none).

The region of the horse that is being covered is the same region occupied by the pad, since, again, Applicant fails to further define specific region boundary, so a region is interpreted as what it states "a region". The claim states particular withers region but never define the boundary of such region, therefore, a region is any area on the withers.

Applicant argued that Vasko et al. do not teach a raised feature element as amended.

As shown in fig. 1 of Vasko et al., when the pad is put on the horse, the sides where the pad elements are located will form a raised feature element in the frontal portion.

Applicant argued that the submitted Declaration under 37 C.F.R 1.132 should overcome Vasko et al. under commercial success.


The declaration has been considered by the Examiner but unfortunately, the rejection is a 102 rejection which cannot be overcome by declaration under 37 C.F.R. 1.132 for commercial success. See MPEP section 706.02(b) in regards to what can overcome a 102(b) rejection.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn